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FM AMEMBASSY BAGHDAD
TO RUEHC/SECSTATE WASHDC IMMEDIATE 3129
RHEHNSC/WHITE HOUSE NSC WASHDC PRIORITY
RUEKJCS/SECDEF WASHINGTON DC
INFO RUCNRAQ/IRAQ COLLECTIVE

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E.O. 12958: N/A
TAGS: [PGOV](#) [PHUM](#) [KJUS](#) [KCRM](#) [KDEM](#) [IZ](#)
SUBJECT: TRIAL OF SADDAM HUSSEIN - SESSIONS 13 AND 14

¶1. (SBU) SUMMARY: On Day 13 (February 28) and Day 14 (March 1) of the Iraqi High Tribunal's (IHT's) Ad Dujayl trial, the court introduced documentary evidence directly incriminating each of the eight defendants. The court also recommended that Sadoon Shakir (former Minister of Interior during the 1982 attack against Ad Dujayl) be referred to the IHT Investigative Chamber because of his alleged participation in the attack against Ad Dujayl. During the March 1 proceedings, defendants Barzan Ibrihim al-Tikriti and Saddam Hussein made inculpatory statements in open court, conceding that they ordered certain atrocities. The court is adjourned until March 12, when it is expected that each defendant will provide individual testimony. The court also will identify handwriting experts during this adjournment in order to verify that the documents already introduced are authentic.
END SUMMARY.

DAY 13 OF TRIAL

¶2. (U) Day 13 of trial began without incident. Each defendant was brought into court without struggle and the principal Iraqi attorneys of record ended their boycott and represented their clients. The principal attorneys for Saddam Hussein, Kaleel al-Dolami and Khamees al-Ubaydi, requested that the court adjourn because: (1) Saddam Hussein, as a result of his hunger strike, appears too frail to continue; (2) non-Iraqi defense counsel need additional time to coordinate their entry into Iraq and admission to the court; (3) the security situation in Iraq is unstable; and (4) the attorneys require additional time to prepare their case. (NOTE: According to a medical report completed by MNF-I physicians, Saddam faced no medical problems stemming from his refusal of solid food from February 12-21, 2006. As for the non-Iraqi defense counsel's failure to appear on Days 13 and 14, the court gave public notice on February 14 that proceedings would resume on February 28. Moreover, on February 21, Judge Ra'ouf met with Iraqi defense attorney Khamees al-Obeidi and advised him that the non-Iraqi attorneys would be permitted to appear in court if they meet with the court in chambers immediately prior to the commencement of proceedings on February 28. END NOTE.)

¶3. (U) When Chief Trial Judge Ra'ouf Abdul-Rahman rejected the attorneys' request to adjourn, both attorneys left the courtroom and were replaced with IHT standby counsel. Khamees and Kaleel watched the day's proceedings on a live feed that was broadcast into the defense counsel room.

¶4. (U) Defendant Barzan al-Tikriti complained that, upon the departures of Kaleel al-Dolami and Khamees al-Ubaydi, he was unrepresented. Although Kaleel and Khamees are Barzan's attorneys, they are not his retained principal attorney of choice. That attorney, Majeed Hidab Halhool, remained in the courtroom after Kaleel and Khamees left, as did all the other

retained attorneys.

¶5. (U) The trial commenced with the introduction of documentary evidence through the Chief Prosecutor, Ja'afar al-Musawi. This evidence included an execution order for 147 people who allegedly were members of the Al-Dawa party and involved in the failed assassination attempt against Saddam Hussein. According to al-Musawi, Judge Awad al-Bandar signed this order and Saddam Hussein signed another document approving the execution of these individuals. Other documents demonstrated that the regime detained nine children (aged 11-17 years old) to punish those allegedly involved in the assassination attempt. Other evidence included decrees confiscating land in Ad Dujayl and orders of detention for 687 people from Ad Dujayl (including of women and children).

DAY 14 OF TRIAL

¶6. (U) Day 14 was notable in that Khamees, one of Saddam Hussein's principal attorneys of record, attended, as did all other privately-retained defense attorneys. The trial commenced with Chief Prosecutor al-Musawi introducing additional documentary and other evidence. Of particular importance were an aerial photograph of the city of Ad Dujayl taken before the former regime commenced its attack and an aerial photograph taken shortly after the attack. The photographs showed that large portions of the city had been destroyed.

¶7. (U) Equally compelling was an audiotape in which a former regime member spoke to Saddam in 1991 and suggested that Saddam quell the uprisings in Basrah by attacking it as he

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did Ad Dujayl. Documentary evidence introduced during Day 14 included a memorandum from the Department of Legal Affairs in which it was acknowledged that 52 people were tortured to death during the investigation.

¶8. (U) At the conclusion of the documentary phase of the case, the Chief Prosecutor demanded that the IHT refer Sadoon Shakir to the Investigative Chamber as a result of his alleged participation in the attack against Ad Dujayl. The defense attorneys objected to this request and stated that they will call Sadoon Shakir as a witness. The court reserved judgment on the request. The court then read into the record five witness statements from individuals who were unable or unwilling to testify in court.

¶9. (U) Shortly before court adjourned, both Barzan Ibrihim al-Tikriti and Saddam Hussein addressed the Trial Chamber. Barzan stated that he personally had ordered defendant Taha Ramadan to direct the tractors used to destroy the orchards around Ad Dujayl, and Saddam stated that he personally ordered that the orchards in Ad Dujayl be razed. Saddam also stated that he had ordered that the 147 individuals be referred to trial in front of defendant Awad Bandar, who previously had acknowledged sentencing some of the persons listed in the execution order. Saddam reasoned those actions by asserting that the razing of the orchards was not a crime because they belonged to those who were found guilty of trying to assassinate him. (COMMENT: The implications of these admissions are important because they establish acknowledgment by four of the defendants of individual command responsibility over some of the atrocities that form the basis of the charges. END COMMENT.)

NEXT SESSION: DEFENDANTS' TESTIMONY

¶10. (U) The court recessed until March 12 in order to give the defense attorneys and experts time to review the documents in question. It is expected that, when trial

resumes, the trial chamber will call into the courtroom each defendant, one by one, to hear his testimony. If the defendants challenge the authenticity of the documentary evidence already produced, the court will summon three to five handwriting experts and review their qualifications. If the experts are deemed qualified, the court will request that they review the documentary evidence (over a two-week period) and testify whether they believe the documents to be authentic. When these reports are complete, the court will reconvene and listen to the opinions contained therein.

¶11. (SBU) COMMENT: The court demonstrated control over the process and the defendants on these two days of trial. None of the defendants shouted at the bench, and the defendants and their attorneys refrained from any actions requiring intervention by Judge Ra'ouf. Indeed, the court's ability to move forward so soon after the violence following the Samarra bombing is a welcome sign. END COMMENT.
KHALILZAD